IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4516 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgement?-Yes. : YES

2. To be referred to the Reporter or not? :-Yes.

3. Whether Their Lordships wish to see the fair copy of the judgement?-No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No. : NO

5. Whether it is to be circulated to the Civil Judge?-No. :

CRANE OWNERS ASSOCIATION

Versus

COMMISSIONER OF SALES TAX OR SUCCESSOR

Appearance:

Mr.R.D. Pathak, Advocate, with
MR IM KAPUR for Petitioners

Mr.S.N. Shelat, Additional Advocate General, with
M/S MG DOSHIT & CO for Respondent No. 1, 2, 3, 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE B.C.PATEL

Date of decision: 13/04/2000

C.A.V. JUDGEMENT: (Per D.M. Dharmadhikari, C.J.)

#. This petition has been filedby Crane Owners' Association in a representative capacity on behalf of 76 members, two of whom have joined in the petition as petitioners, for assailing the privisions contained in Section 3A(5) and Section 47(4A)(b) as also the notification dated 19.12.1998, Annexure A/2(2), issued under the provisions of the Gujarat Sales Tax Act, whereby the State Legislature has imposed tax at a specified rate on transfers of cranes for use, by deeming them to be "specified sales".

2. In order to empower the Legislature to impose tax not only on `sales' strictly falling in that definition in law, but also on transactions which resemble sales, the expression used in various entries of the Constitution, i.e. "tax on the sale or purchase of goods" was widely defined by introducing Clause (29A) in Article 366 of the Constitution, which, with its sub-clauses, deserves reproduction :-

> " 366. In this Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say -
>
> ... ...
>
> (29A) "tax on the sale or purchase of goods" includes -
>
> (a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
>
> (b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
>
> (c) a tax on the delivery of goods on hire purchase or any system of payment by instalments;
>
> (d) a tax on the transfer of the right to use any goods for any purpose

(whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuaable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;"

3. Consequent to the insertion of Clause (29A) in Article 366 of the Constitution, enabling the Legislature to impose tax on "deemed sales ", the State Legislature amended the local Sales Tax Act for taxing such transactions, which resemble sales, by introducing definition clause (30C) in Section 2. The expression "specified sale" in Section 2(30C) is defined as under :-

"2. Definitions

In this Act unless the context otherwise requires

... ...

(30C). "Specified Sale" means the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration, and unless the context otherwise requires, the words "sell", "buy", and "purchase" with all their grammatical

variations and cognate expressions shall be construed accordingly...."

(Underlining for pointed attention and emphasis)

4. The charging section 3A for levy of tax on defined "specified sales" in its relevant parts reads as under :-

"3A. LIABILITY OF TAX ON THE TRANSFER OF RIGHT TO USE ANY GOODS.

(1) Every dealer referred to in sub-clause (h) of clause (10) of Section 2,

Whose turnover, -

... ...

(b) of specified sales of goods specified in Schedule III made by him during the period specified in sub-clause (i) or (ii) has exceeded or exceeds Rs.50,000;

shall, until such liability ceases under sub-section (3), be liable to pay tax under this section on his turnover of specified sales made on or after the designated day;

Provided that a dealer to whom clause (i) does not apply but clause (ii) applied and whose turnover of all specified sales first exceeds the limit specified in this sub-section after the designated day, shall not be liable to pay tax in respect of specified sales which take place upto the time when his turnover of specified sales as computed from the first day of the year in which the designated day falls first exceeds the limit specified in this section.

... ... "

The maximum permissible rate of tax on specified sales is

provided in sub-section (5) of Section 3A, which reads as under :-

> "3A. ... ...
>
> (5) There shall be levied a sales tax on the turnover of specified sales of goods specified in Schedule III at such rate not exceeding ten paise in a rupee as the State Government may, by notification in the Official Gazette, specify, and different rates may be specified for different goods mentioned in that Schedule for different classes of dealers."

5. Initially, in the list of Goods specified in Schedule III "heavy equipments", such as cranes, were not included. The State Government issued the impugned notification dated 19.12.1998 { Annexure A/2(2) } to insert item No.19 in Schedule III to include the goods described as "heavy equipments", such as cranes. By such inclusion, the business in cranes is thus covered by definition of "specified sale" and attracts tax.

6. After the aforesaid legislative changes made in the Act and in Schedule III by including in the specified sales transactions of transfer for use of heavy equipments, like cranes, the petitioner-Association sent written representations to the Commissioner of Sales Tax, disputing the liability of the Crane Owners for payment of tax. In the representations addressed to the Commissioner of Sales Tax on behalf of the Crane Owners, it was submitted that such business transactions, where cranes are made available to the customers only for use with full and exclusive control of ownership and use of the cranes with the crane owners, the transaction cannot be deemed to be a "specified sale" to be made exigible to tax. The Commissioner of Sales Tax, by his impugned letter dated 6.5.1999, Annexure A/10, intimated his opinion to the Association, stating thus :-

> "... Subject :- Clarification regarding the question whether giving the crane on hire charges can be considered as specified sale.

Reference : Your representation dtd. 5-11-98.

Sirs,

Regarding the above subject and reference, it is to be stated that it was represented by you and Crane Owners Association that the transaction of giving crane on hire cannot be considered as specified sale in view of entry 19 inserted from 1/8/98 in Schedule III viz. "heavy equipments such as crane" and that no tax can be charged on the income from the hire of the crane on the basis of right to use.

By considering the points raised in this connection viz. the entire modus operandi of giving crane on hire, understanding between the hirer of the crane and the lessee and the legal elements contained in the transaction of right to use following :

(1) Actual or physical possession of the goods

(2) Effective control over the goods by lessee

(3) Transfer of right to use the specific goods

It appears that the transaction of giving crane on hire by you contains all these elements and, therefore, it is the opinion of the Department that from the legal view point, the transaction of giving crane on hire and the rental income received therefrom is exigible to tax at the rate of 4% under entry 19 of Schedule III and in this way, your liability to pay tax arises which may be noted. This is only the opinion of the Department and not an order under the law.

... ... "

(Underlining to invite pointed attention).

After receiving the above opinion of the Sales Tax Commissioner, the petitioner-Association, on behalf of its

members, engaged in the business of cranes, has directly approached this Court by way of this Special Civil Application under Article 226 of the Constitution of India to assail the action of the Sales Tax Authorities on the above-mentioned provisions of the Sales Tax Act and the notifications issued thereunder.

7. The learned Senior Counsel Shri Pathak, appearing on behalf of the petitioners, referred to and relied on the contents of some of the work orders entered into with customers situated outside the State. On reading the contents of the above-referred work orders, contention advanced on behalf of the crane owners is that the transaction undertaken by the crane owners is only in the nature of rendering services to its customers for lifting and shifting etc. of heavy goods. It is submitted that the crane is a "non-transport vehicle", as specified under the Motor Vehicles Act, 1988. The operator of the crane is required to obtain the licence for operating the cranes. The crane operators are employees of the crane owners. The services rendered are only by operating the crane. The possession and control of the cranes even when put to use for customers remain with the crane owners. The use of the cranes is allowed through licensed drivers engaged by the crane operators. The cranes are operated through the drivers of the crane owners. The cranes are maintained with payment of R.T.O. taxes, insurances, etc., by the crane owners and sometimes, the fuel consumed is also by the crane owners. It is submitted that in all transactions entered into by the crane owners, there is a contract for rendering service by employing the crane, but there is no transfer of cranes for exclusive use or control by the transferee.

8. On behalf of the petitioners, for interpreting the words "specified sale" contained in definition section 2(30C), it is urged that as the control over the crane, even if put to use for rendering services to the transferee, is with the crane owners, it cannot be held that there is any taxing event, as described in the definition clause of "transfer of the right to use any goods". In putting such a construction on the definition clause of "specified sale", it is argued that the use of expression "for any purpose" in phrase "transfer of the right to use any goods for any purpose", conveys a meaning that the transfer of goods exigible to tax would be those where the goods are placed in exclusive control and possession of the transferee for the latter's use. It is argued that where the exclusive control of the crane, and its custody is retained by the crane owners, there is no transfer of right to use any goods with exclusive control

passed on to the customers. Very strong reliance has been placed on the Division Bench decision of the Allahabad High Court in Ahuja Goods Agency and another v. State of Uttar Pradesh and others, reported in (1997) 106 STC 540. Reliance was also placed on the Division Bench decision of the Andhra Pradesh High Court in Rashtriya Ispat Nigam Ltd. v. Commercial Tax Officer, Company Circle, Visakhapatnam, reported in (1990) 77 STC 182.

9. On the first ground urged, learned Additional Advocate General Shri S.N. Shelat submitted that clause 2(30C), defining "specified sale" in the said Act has to be construed in the light of Clause (29A) of Article 366 of the Constitution, from where the source of power to tax "deemed sales" is traceable. It is submitted that sub-clause (d) of clause (29A) of Article 366 as contra-distinguished from other sub-clauses (a) to (f), therein, mere transfer of the right to use any goods attracts tax irrespective of whether the transferor retains full or partial control of the goods, being its owner. It is submitted that the expression "for any purpose" is only to cover all contingencies where transfer of right to use goods takes place and the said expression "for any purpose" does not convey meaning of transfer of exclusive control to the transferee. On behalf of the Revenue, it is submitted that there are large number of decisions of different High Courts, in which all kinds of "transfers of the right to use any goods" have been held as taxable. Reliance is placed on the decision of this Court in The Growth Leasing & Finance Ltd. v. State of Gujarat, reported in (1992) 85 STC 25, Krushna Chandra Behera and another v. State of Orissa and others, reported in (1991) 83 STC 325, 20th Century Finance Corporation Limited and another v. State of Maharashtra, reported in (1989) 75 STC 217 (Bombay) and a decision of the West Bengal Taxation Tribunal in CESC Limited v. Commercial Tax Officer and others, reported in (1995) 99 STC 446.

10. We have carefully examined the constitutional provisions contained in sub-clauses (a) to (f) in clause (29A) of Article 366 and the definition of "specified sale", contained in Section 2(30C) in the State Act. We have also examined the contents of the work orders entered into by some of the crane owners with customers outside the State. In our considered opinion, whether a given transaction with regard to cranes, results in "transfer of the right to use any goods for any purpose", within the meaning of sub-clause (b) of clause (29A) of Article 366 of the Constitution, and in the definition of "specified sale" in Section 2(30C), is a matter, which cannot be decided theoretically in the absence of the relevant documents of

contract, if any, explaining the nature of the transaction, the attending facts and circumstances with regard to the alleged transfer of possession of the crane and the nature of the use in the hands of the transferor or the transferee. It is no doubt true that there can be a contract with regard to crane where the crane owner undertakes to carry out a stipulated job and puts the crane to use for undertaking the job, while retaining full control over the crane and its use. There can also be another contract, where the crane is hired by the customer, may be along with the driver made available on crane by the crane owner, for doing job on the latter's premises. Each case, therefore, will have to be decided on the basis of facts, circumstances and the nature of documents of the transaction, if any. It is hazardous to answer such an academic question without facts of a concrete case. Some of the work orders produced before us on behalf of the petitioners are not at all helpful for taking a decision one way or the other because the work orders produced are inter-State transactions, and seemingly are not exigible to tax under the local Act.

11. The petitioners have bypassed the provisions of the Act and if occasion arises, of resorting to remedy of appeal under the Act. The justification shown for direct approach by invoking Article 226 of the Constitution of India is that the Commissioner of Sales Tax having expressed an adverse opinion, it is most unlikely that the Assessing Officer, who is subordinate to him, would consider the case of the petitioners judiciously and without being influenced by the opinion of the Commissioner.

12. In our opinion, for attracting the taxing provision under the State Act in relation to transactions of cranes, retention of exclusive or partial control or custody of crane by its owner may be a relevant circumstance, but cannot be a sole circumstance for coming to the conclusion on taxability of the transaction. In support of direct approach to this Court, by invoking Article 226, reliance is placed on the Supreme Court decision in the case in Paradip Port Trust v. Sales Tax Officer, Cuttack and others, reported in (1999) 114 STC 178. In the said case, the Legislative power of the State to impose sales tax itself was questioned. We shall be dealing with the vires questions raised on behalf of the petitioners and since for the reasons, which we shall discuss hereinafter, we find no merit in it, we cannot allow the petitioners to bypass the sales tax provisions in the Act of assessments and remedy of appeals. It is only in those proceedings that all facts and circumstances in

the light of documents or papers concerning the transactions, will be looked into and finding on facts reached before applying the relevant provisions of law.

13. In relegating the petitioners to the regular remedy under the tax law, we are supported in our view by two decisions of the Supreme Court in Sales Tax Officer, Jodhpur and another v. M/s. Shiv Ratan G. Mohatta, AIR 1996 SC 142, and in State of Goa v. Leukoplast (India) Ltd., AIR 1997 SC 1875. In the former case of Shiv Ratan Mohatta (supra), the Court refused to extend aid of power under Article 226 of the Constitution by observing thus:-

> "... It is not the object of Art. 226 to convert High Courts into original or appellate assessing authorities whenever an assessee chooses to attack an assessment order on the ground that a sale was made in the course of import and, therefore, exempt from tax. The facts that the assesses have to deposit sales tax, while filing an appeal, does not always mean he can bypass the remedies provided by the Sales Tax Act. To warrant the entertainment of a petition under Art. 226, there must be something more in a case, something going to the root of the jurisdiction of the Sales Tax Officer, something which would show that it would be a case of palpable injustice to the assessee to force him to adopt the remedies provided by the Act.
>
> ... ...
>
> Moreover, it is not the function of the High Court in exercising jurisdiction under Art. 226, in taxing matters to constitute itself into an original authority or an appellate authority and determine questions relating to the taxability of a particular turnover. Under the Rajasthan Sales Tax Act, and other Sales Tax Acts, the facts have to be found by the assessing authorities. If any

> facts are not found by the Sales Tax Officer, they would be found by the appellate authority and not by the High Court acting under Art. 226. The tendency on the part of the assessee to rush to the High Court after an assessment order is made should not be encouraged by the High Court. The High Court should entertain petitions under Art. 226 of the Constitution in respect of taxing matters after an assessment order has been made, only in very exceptional circumstances...."

14. In the case of Leukoplast (India) (supra), the Court relied on its earlier decision in Titaghur Paper Mills Co. Ltd. v. State of Orissa, reported in AIR 1983 SC 603, and relied on the observations therein, which are as under :-

> "... Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under sub-section (1) of S.23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of S. 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under S. 24 of the Act. The Act provides for a complete machinery to challenge an orer of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Art. 226 of the Constitution .... "

15. As has been mentioned above, on behalf of the petitioners, learned counsel contended that the opinion given by the Commissioner in writing in reply to the representations of the petitioners made the remedy before the Assessing Officer an exercise in futility. We do not think so. The Commissioner in his reply to the

representations very expressly stated in the last part of his opinion that what he was conveying "is only the opinion of the Department and not an order under the law". Such opinion expressed by the Commissioner was not any statutory order under Section 62 of the State Act as was the case arising from Madhya Pradesh Act, where a statutory order was passed in exercise of powers (analogous to Section 62 of the present State Act) under Section 42B of the Madhya Pradesh Act (see the distinction in the case of Filterco and another v. Commissioner of Sales Tax, Madhya Pradesh and another, reported in (1986) 61 STC 318, on which reliance was placed on behalf of the petitioners). In our considered opinion, therefore, for determining their taxation liability on transaction of cranes, the petitioners cannot be allowed to straight away invoke the power of this Court under Article 226 of the Constitution of India without first exhausting the regular procedure of assessment and remedies under the State Act.

16. We shall now deal with the other grounds urged whereby provisions of the Act have been challenged. It is argued that the scheme of the State Act incorporates "single point levy" and does not provide for "multi-point levy". It is submitted that the provisions of Section 3A read with Schedule III and the notification issued thereunder provide for levy of multi-point tax on same goods as "specified sale". The challenge is explained by example. It is stated that so far as sales proper or real sales are concerned, in them the ownership in goods is transferred from one person to another. In single point levy, the sale effected by `A' to `B', once subjected to tax, on subsequent sale of same goods from `B' to `C' and `C' to `D' and so on, there is no further levy of sales tax. In contrast, in the scheme of multi-point levy, on deemed sales or as defined "specified sales", which are mere transfer of goods for use, the Act provides for a multi-point tax. Resultantly when `A' transfers goods for use to `B', they are subjected to tax. They are further subjected to tax as and when the same goods are again transferred for use by `A' to `C' and by `A' to `D' and so on. It is submitted that the provision contained in charging Section 3A of the Act, permitting such multi-point levy of tax on deemed or "specified sales" is discriminatory compared to imposition of only single point tax on sales proper.

17. The argument advanced on behalf of the petitioners appears attractive, but when weighed and considered in the light of the provisions, as originally stood and amended after insertion of clause (29A) in

Article 366, does not commend acceptance.

18. On behalf of the State, learned Additional Advocate General explains that on "sale proper", there is a single point tax, meaning if sale of good by `A' to `B', has suffered tax, it would not further be taxed on subsequent sales from `B' to `C' and `C' to `D', and so on. So far as levy of tax on transfer of goods for use, i.e. "specified sales" are concerned, since the levy is merely on delivery of the goods or handing over of goods on hire or by way of bailment for use, each such transaction by the owner of the goods, in favour of different persons, constitutes different completed transfers. In such transfers, ownership remains with the transferor. If `A', who is the transferor, transfers goods for use to `B', there is one complete transfer subjected to tax and if the same owner of goods `A' for the second time transfers for use the same goods to `C', there is another completed transfer attracting tax. According to the learned counsel for the State, this cannot be described as multi-point levy as is the case of a sale as understood in strict legal sense.

19. We do not wish to enter into correctness of either of the contentions advanced by the counsel for the rival parties on the question of single point or multi-point levy. In our considered opinion, the challenge to the provisions of the Act on the ground of discrimination in levy of tax on sale proper and "specified sales", which are deemed sales, has no merit. Sales proper, and transfers, which resemble sales or deemed sales are inherently two different nature of transactions which justifiably deserve dissimilar treatment. There is reasonable classification for differently taxing the two kinds of sales, i.e. real sales and deemed sales and such classification has nexus with the object sought to be achieved, namely to bring within the taxing net not only the real sales, but also transfers which have resemblance of sales. On the real sales, the title in goods passes from transferor to the transferee and, therefore, the scheme of the Act provides for single point levy. In specified sales, i.e. transfer of goods only for use, which are categorized in various sub-clauses (a) to (f) of Article 366 (29A) of the Constitution and definition clause under Section 2(30C) of the State Act, the right or title in the goods does not pass from the transferor to the transferee. What stands transferred is only right of use of goods from the owner to the hirer or the bailee. In the latter category of sales, which are deemed sales or "specified sales", business transactions can be carried on by the

same dealer or transferor in relation to same goods. Therefore, the scheme of the Act provides for levy of tax on each such transfer of goods conveying right of use to the transferee. This Court does not find any vice in the provisions of the Act. They rightly treat for levy of tax differently, sales, which are "sales proper" or sales in strict legal sense, and "specified sales", meaning transfers of goods with right of use. The provisions of the Act allow real sale to be subjected to single point levy and the transfers with right of use to multi-point levy. The attack to the provisions of the Act on the ground of discrimination must fail as the Legislature can classify goods and transactions for purpose of taxation and treat them differently.

20. The last ground urged is that sub-section (5) of Section 3A is a provision which suffers from the vice of excessive delegation of essential legislative function to executive authority. Sub-section (5) of Section 3A reads as under : -

> "3A. LIABILITY OF TAX ON THE TRANSFER OF RIGHT TO USE ANY GOODS.
> (5) There shall be levied a sales tax on the turnover of specified sales of goods specified in Schedule III at such rate not exceeding ten paise in a rupee as the State Government may, by notification in the Official Gazette, specify, and different rates may be specified for different goods mentioned in that Schedule for different classes of dealers."

21. The contention advanced on behalf of the petitioners is that the State Government has been conferred with an unguided power to impose tax at a rate to be specified by the State Government, which, in the present case on heavy equipments, such as cranes, is 4%, as specified in the impugned notification dated 19.12.1998.

22. Reliance is placed on the decision of the Supreme Court in M/s. Devi Das Gopal Krishnan v. State of Punjab and others, reported in AIR 1967 SC 1895 = (1967) 20 STC 430.

23. The ground urged of alleged excessive delegation of essential legislative function to the executive has absolutely no merit. As held by the Supreme Court in the

case of M/s. Sitaram Bishambhar Dayal v. State of U.P., AIR 1972 SC 1168 :-

> "... It is true that the power to fix the rate of a tax is a legislative power but if the legislature lays down the legislative policy and provides the necessary guidelines, that power can be delegated to the executive. Though a tax is levied primarily for the purpose of gathering revenue, in selecting the objects to be taxed and in determining the rate of tax, various economic and social aspects such as the availability of the goods, administrative convenience, the extent of evasion, the impact of tax levied on the various sections of the society etc. have to be considered. In a modern society taxation is an instrument of planning. It can be used to achieve the economic and social goals of the State. For that reason the power to tax must be a flexible power. It must be capable of being modulated to meet the exigencies of the situation.

24. In State of Madras v. Gannon Dunkerley Co. (Madras) Ltd., AIR 1958 SC 560, the Supreme Court observed :-

> "... Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be levied, the rate at which it is to be charged in respect of different classes of goods and the like .... "

In Section 3A(5) of the Act (quoted above), the Legislature has given the maximum limit of 10 paise in a rupee as the tax leviable on specified sales. The section thus provides necessary guidelines. The notification issued imposes within the specified limit, 4% tax on heavy equipments such as cranes. Since Section 3A(5) contains the guidelines, it cannot be held that in leaving the question of determination of rate of tax, on a class of goods within the permissible limits, to the State Government there is abdication of essential legislative function by the State Legislature in favour

of the Executive. The decision of the Supreme Court in Devi Das (AIR 1967 SC 1895) (supra) is distinguishable. There, under Section 5 of the Punjab General Sales Tax Act, as it originally stood, uncontrolled power was conferred on the provincial government to tax at such rates as the Government might direct, thereby the Legislature practically had effaced itself in the matter of fixatio[Bn of rates and it did not give any guidance either under that Section or under any other provision of the Act with regard to the extent of levy of tax. Such is not the position here. In the present case, in sub-section (5) of Section 3A, the Legislature has given necessary guidelines by providing the maximum limit of rate of tax.

25. A similar ground based on alleged excessive delegation of essential legislative function was repelled by the Supreme Court in the case of M/s. Babu Ram Jagdish Kumar and Co. v. State of Punjab and others, AIR 1979 SC 1475 in the following words:-

> "... Even in matters relating to taxation laws, it has been consistently held that the Legislature can delegate the power to fix rates of tax provided there are necessary guidelines regarding such fixation on the ground that in a modern society, taxation is one of the methods by which economic and social goals of the State can be achieved and the power to tax, therefore, should be a flexible power and capable of being easily altered to meet the exigencies of circumstances. Such delegation has been held to be not amounting to delegation of essential legislative function .... "

26. Having thus considered and rejected all the grounds urged on behalf of the petitioners, the present petition deserves to be dismissed. We, however, grant liberty to the petitioners to urge all other grounds available to them in the pending assessments and if necessary, urge them in all subsequent proceedings in appeal or revision under the Act.

27. In the prayer clause, a declaration is sought regarding constitutional invalidity of clause (b) of sub-section (4A) of Section 47of the Act, which provides for charging of interest at the rate of 24% per annum on

the tax remaining unpaid. The said ground was not orally urged in this petition, because it is subject matter of another petition, being Spl. C.A. No. 2952 of 1999, which has been decided by us on April 11, 2000.

28. In the result, for the reasons and observations made above, the petition fails and is hereby dismissed. Rule is discharged, but, in the circumstances, without any order as to costs.

April 13, 2000 (D.M. Dharmadhikari, C.J.)

(B.C. Patel, J.)

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(apj)